



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Ellman Companies
File: B-251288.2
Date: October 21, 1993

David L. Winstead, Esq., and Marek S. McCallum, Esq., Wilkes, Artis, Hedrick & Lane, for the protester. Mark Ramsey, Esq., General Services Administration, for the agency. Aldo A. Benejam, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest by incumbent-lessor that contracting agency must consider moving and relocating expenses in evaluating offers under solicitation for offers (SFO) for office space is dismissed as untimely where SFO explained in detail how price was to be evaluated; evaluation factors (which did not indicate that agency will consider moving and relocating expenses) remained unchanged during the 12 months that elapsed since protester received SFO; and protest was not filed until after submission of best and final offers.

DECISION

Ellman Companies, the incumbent-lessor, owner of the One North First Street building in Phoenix, Arizona, protests any award of a lease under solicitation for offers (SFO) No. LAZ91987, issued by the General Services Administration (GSA) for office and related space for use by the Bureau of Indian Affairs (BIA). Ellman contends that in evaluating offers under the SFO, GSA must consider moving and relocating expenses.

We dismiss the protest.

BIA's Phoenix area office currently occupies approximately three floors of One North First Street pursuant to a lease GSA awarded Ellman in 1986, which will expire in December 1994. On May 8, 1992, GSA issued the SFO to replace the expiring lease, calling for a minimum of 58,040 to a maximum of 60,942 net usable square feet (NUSF) of office and related space. The SFO contemplates award of a lease for a 5-year period, with a 3-year option.

Following a survey of the protester's building, GSA concluded that One North First Street would not be considered a potential site because the building did not meet the SFO's minimum NUSF requirement. Consequently, GSA did not provide a copy of the SFO to Ellman. Having learned that the SFO had been distributed to its competitors, Ellman requested that GSA provide it with a copy of the SFO. On September 24, the contracting officer mailed Ellman a copy of the SFO, and informed the protester that based on the results of the survey, One North First Street would not be considered a potential site.

On November 5, Ellman filed an agency-level protest challenging the agency's decision to exclude One North First Street from the competition. Before GSA responded to that protest, Ellman filed a protest in our Office alleging that GSA had improperly failed to provide the firm with a copy of the solicitation. We denied that protest in Ellman Co., B-251288, Mar. 18, 1993, 93-1 CPD ¶ 244.

On October 4, 1993, Ellman filed the instant protest in our Office. Ellman states that notwithstanding our decision denying its earlier protest, the agency has permitted Ellman to compete under the SFO. The protester further states that in response to GSA's request, Ellman submitted its best and final offer (BAFO) under the SFO on or before August 17, 1993. The protester asserts that it has since learned that in evaluating offers, GSA will not consider moving and relocating expenses. Ellman alleges that in order to determine which offer is "most advantageous to the government" under the SFO, GSA is required to consider the costs of moving and relocating BIA to another building.


Ellman's protest is untimely. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1993). Challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330. The primary purpose of these timeliness rules is to afford parties a fair opportunity to raise any objections they may have to the terms of a solicitation prior to the submission of offers, without unduly disrupting or delaying the procurement. While the facts in this case do not fall squarely under either of

these rules,¹ we think that the rationale underlying these timeliness principles nevertheless applies, since Ellman is essentially challenging the SFO's evaluation scheme.

Although the protester states that it first learned on September 29, 1993, that GSA did not intend to evaluate relocation and moving expenses, the SFO's detailed price evaluation formula and award basis have remained unchanged since September, 1992, when Ellman received a copy of the SFO, 1 year prior to filing its protest. The SFO clearly announced how price is to be evaluated. Specifically, section 1.10 of the SFO, "PRICE EVALUATION (PRESENT VALUE)," states that the "EVALUATION OF OFFERS WILL BE ON THE BASIS OF THE ANNUAL PRICE PER SQUARE FOOT, INCLUDING ANY OPTION PERIODS," and that "[GSA] WILL MAKE [A] PRESENT VALUE PRICE EVALUATION BY REDUCING THE PRICES OFFERED TO A COMPOSITE ANNUAL SQUARE FOOT PRICE" in accordance with a formula explained in detail in the SFO. The SFO states that "award is to be made to the responsible offeror whose proposal conforms to the SFO's requirements and who submits the lowest priced offer," resulting from application of the formula. (Emphasis added.)

It thus was apparent from the face of the solicitation that the agency did not intend to consider moving and relocating costs in evaluating offers. Although the protester did not receive a copy of the SFO until after the closing date for receipt of initial offers, at a minimum Ellman was required to raise its objections to the terms of the SFO prior to submitting its offer. See 4 C.F.R. § 21.2(a)(1). To permit Ellman to wait over 1 year after it received a copy of the SFO, and after submitting its BAFO, to argue that GSA should consider relocating and moving expenses in evaluating offers would be inconsistent with our Regulations and unfair to other offerors who relied on the evaluation formula announced in the SFO in preparing their offers. Any objections Ellman may have to the SFO's evaluation scheme should have been raised, at the latest, before Ellman submitted its BAFO "on or before August 17, 1993." Since Ellman did not file this protest until October 4, its protest is untimely and will not be considered.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

¹Ellman did not receive a copy of the SFO until after the date set for receipt of initial offers, and the SFO's original price evaluation factors have remained unchanged.